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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/768,578	01/30/2004	Jennifer Czark	717-508	7317
23869	7590	11/15/2007	EXAMINER	
HOFFMANN & BARON, LLP			BECKER, DREW E	
6900 JERICHO TURNPIKE			ART UNIT	PAPER NUMBER
SYOSSET, NY 11791			1794	
			MAIL DATE	DELIVERY MODE
			11/15/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/768,578

Applicant(s)

CZARK ET AL.

Examiner

Drew E. Becker

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 23-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14, 23-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 23-31 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant has not pointed out where the new claim limitations are supported by the application.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 3, 25, and 27-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Claim 3 recites a "low speed, high torque motor". It is not clear what levels of speed and torque would be considered "low" or "high".
6. Claim 25 recites the limitation "said food engaging surface". There is insufficient antecedent basis for this limitation in the claim.
7. Claim 29 recites the limitation "said first food engaging surface". There is insufficient antecedent basis for this limitation in the claim. It is not clear whether this is

the same element as the "blunt" surface. It is not clear whether this element needs to be blunt.

8. Claim 27 recites "blunt" surfaces. It is not clear what degree of roundness would be considered "blunt".

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-6 and 8-13 are rejected under 35 U.S.C. 102(b) as being anticipated by McLean [Pat. No. 4,199,112].

McLean teaches a device comprising a base (Figure 1, #10), an electric motor (column 2, line 45), a removable container (Figure 1, #18), a cutting member with a slot and cutting edge (Figure 2, #40), a feed vessel (Figure 1, #24), a blade adjoining the inner surface of the container which inherently provided a mixing and blending effect (Figure 1, #20), and a drive shaft (Figure 1, #14). Phrases such as "at a speed between about 1000-1400 rpm" are merely preferred methods of using the claimed apparatus.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 7 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over McLean in view of Williams [Pat. No. 4,285,473].

McLean teaches the above mentioned components. McLean does not recite gears.

Williams teaches a food processor comprising a gear assembly (abstract). It would have been obvious to one of ordinary skill in the art to incorporate the gears of Williams into the invention of McLean since both are directed to food processors, since McLean already recited using any suitable link between the motor and drive shaft (column 2, line 48), and since the gear assembly of Williams was an effective means for controlling a food process blade (column 2, lines 12-31).

13. Claims 23-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Guilder [Pat. No. 2,728,368] in view of Meeker et al [Pat. No. 2,185,155].

Van Guilder teaches a device comprising a base with an electric motor (Figure 1, #12; column 1, line 72), a removable container (Figure 1, #10), a cutting member with a hole and cutting edge (Figures 1-2, #30 & 42), a feed vessel above the cutting member (Figure 1, #56), and a mixing blade with in the container and below the cutting member (Figure 1, #112). Van Guilder does not recite the mixing blade having radial, planar vanes with holes. Meeker et al teach a mixer device with a mixing blade having radial, planar vanes with holes (Figure 1, #35). It would have been obvious to one of ordinary skill in the art to incorporate the mixer blade structure of Meeker et al into the invention of Van Guilder since both are directed to mixer devices, since Van Guilder already

included a conventional mixer blade but simply did not describe it (Figure 1, #112), and since the mixer blade structure of Meeker et al was a common blade configuration for mixers as shown in Figure 1.

Response to Arguments

14. Applicant's arguments filed 9/4/07 have been fully considered but they are not persuasive.

Applicant argues that "low speed, high torque motor" was definite. However, it is not clear what levels of speed and torque would be considered "low" or "high".

Applicant argues that McLean did not teach a mixing blade. However, the blade of McLean inherently provided this function.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., an absence of chopping or cutting by the mixing blade) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant argues that term "mixing blade" conveyed a specific structure. However, the application is silent with respect to defining this term. Therefore it has been given its broadest reasonable interpretation: a rotating blade which provides some degree of mixing. Clearly, the blade of McLean provided mixing as well chopping of food.

Applicant argues that McLean does not teach using the cutting blade in conjunction with the mixing blade. However, Figure 1 of McLean clearly illustrates this configuration. Furthermore, the cited portion of McLean (c3, l 12-19) does not state that the blades cannot be used together, It simply says that they are "used separately". Clearly, they are separate components of the same device (Figure 1).

Conclusion

15. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

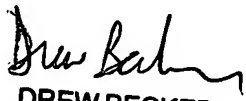
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


DREW BECKER
PRIMARY EXAMINER
11/13/07